VIA ELECTRONIC MAIL

February 11, 2008

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https://secure.commentworks.com/ftc-FACTAfurnishers

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Re: Interagency Notice of Proposed Rulemaking
Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the FACT Act

Ladies and Gentlemen:

In response to the interagency notice of proposed rulemaking, HSBC Finance Corporation[1], and HSBC Bank USA, N.A., (collectively "HSBC"), are pleased to offer comment

[1] Among other companies, HSBC Finance Corporation wholly owns HSBC Auto Finance Inc., HSBC Consumer Lending (USA) Inc., Beneficial Company LLC, HSBC Mortgage Services Inc., HSBC Card Services Inc., HSBC Bank Nevada, N.A., and HFC Company LLC.

on the procedures to enhance the accuracy and integrity of information furnished to Consumer Reporting Agencies ("CRAs") under section 312 of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"). HSBC's affiliated companies worldwide serve over 125 million customers and comprise one of the largest financial services organizations in the world. In the United States and Canada, HSBC businesses provide financial products to nearly 60 million customers. With such a broad and expansive customer base, HSBC is a significant furnisher of information to CRAs, providing information on roughly 45 million accounts monthly.

Section 312 of the FACT Act amends section 623 of the Fair Credit Reporting Act ("FCRA"). Section 623 of the FCRA currently sets forth many of the responsibilities of furnishers of information to CRAs. While there are a number of requirements applicable to furnishers under section 623, those addressed by section 312 include (A) accuracy and integrity guidelines and regulations concerning the information furnished, and (B) direct dispute regulations.

The request for comment issued by the Office of the Comptroller of the Currency, the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Trade Commission (collectively, the "Agencies") outlines specific information desired by the Agencies. HSBC appreciates the opportunity to respond to the Agencies' request, and hopes the following information proves useful to the Agencies in their consideration of the proposed rule.

1. HSBC Relies on Credit Reports as a Furnisher and as a User of Credit Reports

HSBC understands and acknowledges the necessity for accurate credit reports of the highest integrity, because HSBC is not only a furnisher of information but also an end user of the finished product, i.e. the credit report. Indeed, HSBC's consumer lending businesses rely upon a credit adjudication system that assumes authentic scoring of applicants based on multiple furnisher trade lines in their consumer credit reports. As a result, HSBC and other lending businesses collectively rely on the accuracy, completeness, and timeliness of the information supplied by every lending institution to the CRAs. Just as consumers benefit from an accurate credit report, so do all lenders. Having reliable credit reports is paramount in the economic success of the financial services industry and the nation's economic health.

2. Credit Reporting Agencies, Furnishers, and Users of Consumer Reports are Independent Entities with Distinct Obligations

HSBC notes generally that it, like other furnishers of information, is only in control of the specific information it furnishes to a CRA, and not other information maintained or collected by the CRAs. CRAs are not affiliated with HSBC or other lenders. Each CRA maintains its own internal rules and policies for the maintenance of customer data. Items that help to shape their operations include FCRA requirements for data retention and identification of a consumer. While most data providers and CRAs work together to establish appropriate reporting protocols and summary reports, in effect, most CRAs are self-defining in how they actually post data. This

results in the effect that each CRA may report the same information in different ways. Also, data may appear differently than originally furnished.

Additionally, HSBC strongly requests the Agencies to avoid making furnishers responsible for the conduct of others in any way. As an example, we would request the Agencies to avoid any references in the final rule to information that is "reported." We are concerned that the Agencies adequately distinguish between "furnished" information (information from furnishers) and "reported" information (the translation of furnished information appearing on a consumer report). We are also concerned about references in the proposal to information that, while accurate as furnished, "may be erroneously reflected" on a consumer report. Certain provisions of the proposed rule would seem to put a furnisher at risk regarding how furnished information (and even unreported information) is ultimately interpreted by a subjective end user. This includes references to how otherwise accurate furnished information (or lack of information) "contributes to an incorrect evaluation" by a user or "bears on creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living" in the estimation of a user of consumer reports. These references are not required by Section 312 of FACTA and are not appropriate.

HSBC asks that the Agencies recognize the reasonable limitations on a furnisher of information when drafting final rules. HSBC respectfully requests that the Agencies not create liability for furnishers with respect to either (a) how furnished information is translated by a CRA or (b) how an end user might subjectively evaluate furnished (or unfurnished) information, as reported by a CRA, within its unique credit risk modeling.

3. The Agencies Should Adopt the Guidelines Definition Approach

Initially, the Agencies ask for comment as to whether the term "accuracy" should specifically provide that it includes updating information as necessary to ensure that information furnished is "current." It is not clear that such a clarification is necessary, and we urge the Agencies not to create an expectation that a furnisher have specific furnishing timetable requirements. Many furnishers provide information to CRAs on a periodic basis, such as every 30 days. There is no indication that 30 days is inadequate to protect consumers. If the Agencies were to adopt the "current" requirement, it might imply that a furnisher must provide daily (or even instantaneous) "updates" to any information previously furnished. This would be impossible for many furnishers, given their existing programs and resources, and would be unnecessarily costly and burdensome to other furnishers. We therefore ask the Agencies not to adopt this clarification to the definition.

In response to the question of how the Agencies should define "accuracy" and "integrity," HSBC supports adoption of the Guidelines Definition Approach. HSBC's primary concern with the proposed Regulatory Definition Approach is the proposed definition of "integrity," which would impose upon a furnisher the responsibility to ensure it "does not ***omit any term***, such as a credit limit or opening date, of that account or other relationship, the absence of which can reasonably be expected to contribute to an incorrect evaluation by a user of a consumer report of a consumer's credit worthiness, credit standing, credit capacity, character,

general reputation, personal characteristics, or mode of living."[2] (Emphasis added.) HSBC believes such an ambiguous requirement regarding "any term" would be subject to ongoing and varying interpretation, creating the risk of costly litigation and uncertain regulatory enforcement. Should the Agencies ultimately decide to implement the Regulatory Definition Approach, HSBC respectfully asks the Agencies to itemize the specific credit terms they believe must be reported to achieve "integrity," as opposed to leaving furnishers at the risk of an unclear, uncertain, and debatable standard that is capable of unwarranted manipulation.

HSBC's second concern with the Regulatory Definition Approach is the proposed wording of Appendix E to Part 41, Section I.B.2. This would require a furnisher to have written policies and procedures which "ensure that the information it furnishes about accounts or other relationships with a consumer avoids misleading a consumer report user as to the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living." While HSBC and other lenders obviously avoid furnishing misleading information to CRAs, the proposed standard focuses on how a hypothetical end user might subjectively interpret or weigh furnished information (or unfurnished information) and subjects furnishers to the risk of being held responsible for another party's subjective misinterpretation. Indeed, the proposal would require furnishers to "ensure" that furnished information not mislead an end user. HSBC urges the Agencies not to adopt such an impossibly high standard.

Except as otherwise indicated below in Section 4, HSBC believes the Guidelines Definition Approach will provide sufficient objective guidance on the terms "accuracy" and "integrity" and would permit financial institutions the flexibility to interpret these definitions according to their current practices and procedures.

4. Proposed Policies and Procedures Requirements

HSBC has the following comments pertaining to proposals contained in Appendix E to the proposed rule, which would require institutions to develop written policies and procedures to effectuate the Agencies' objective of enhanced accuracy and integrity with respect to furnished data.

A. The Agencies Should Revise Requirements Related to Policies and Procedures to Investigate the "Integrity" of Furnished Data

HSBC is concerned about the proposed requirement in Appendix E, Section I.B.3, which would require a furnisher to have written policies and procedures designed to investigate consumer disputes concerning both accuracy ***and integrity***. As the Agencies note in footnote 17 of the NPRM, however, the definition of "Direct Dispute" is intentionally limited to disputes concerning "accuracy." As further noted by the Agencies, current FCRA provisions require CRAs to resolve only disputes concerning "accuracy and completeness" of furnished data. As a result, it appears inappropriate for the Appendix to require policies governing disputes as to both accuracy and integrity. HSBC requests the Agencies to rephrase this requirement consistent with

[2] § __.41(b).

its approach in the definition of "Direct Dispute" or, alternatively, to provide guidance as to how and when furnishers must investigate consumer disputes concerning "integrity" to meet this requirement.

B. The Agencies Should Clarify that the Proposed Requirement to "Update Information as Necessary" Applies to Periodic, Regular Reporting

Section I.B.4 to Appendix E would require that each furnisher have written policies and procedures which "[e]nsure that it updates information it furnishes ***as necessary*** to reflect the ***current*** status of the consumer's account…."[3] (Emphasis added.) HSBC is concerned that this could be viewed as requiring furnishers to regularly update information based on every type of event that may occur following a charge-off of an account. At the time of charge-off, furnishers typically cease to routinely report information about an account to the CRAs. To our knowledge, most furnishers will, as appropriate, update information provided to CRAs at the time a charge-off is paid in full or a settlement is reached after charge-off. Many furnishers, however, do not report interim changes to a balance based on a payment schedule agreed to as part of recovery efforts, nor do they report a revised status based on bankruptcy proceedings that take place after charge-off. Adding capability to routinely report these kinds of changes would require new computer systems programming. The final rule should make clear that furnishers do not have a duty to report changes to account status once regular reporting ceases, provided that the data reported was accurate at the time it was furnished.

The term "as necessary" might also be interpreted to require financial institutions to conduct interim reviews of the accounts and report the status whenever an account is updated or changed. HSBC recommends that the Agencies clarify the phrase "as necessary." The Agencies should not create a new obligation to report data to CRAs where one does not currently exist. The final rule should recognize that periodic reporting of information to CRAs is appropriate. Alternatively, if the Agencies determine that periodic reporting is somehow insufficient, the Agencies should clearly specify the types of interim review and reporting required.

C. The Agencies Should Not Adopt Specific Record Retention Time Periods

Section IV.C to Appendix E would require a furnisher to have written policies and procedures which ensure it "maintains its own records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute." The proposal solicits comments on whether the guidelines should incorporate a specific record retention requirement to provide for meaningful investigations of direct disputes. HSBC believes that the Agencies should not establish any document retention standards in a final rule. As noted by the Agencies, furnishers are subject to various regulatory document retention periods and otherwise retain discretion over document retention. HSBC believes any document retention mandates concerning the array of account materials related to the furnishing of data would significantly dissuade creditors from furnishing data at all. If furnishers are discouraged from reporting, the thoroughness and consequent value of the credit reporting system could be significantly undermined.

[3] Appendix E to Part 41, Section I (B)(4) of the proposed regulation.

Related to the topic of document retention is whether and how disputes raised after a reasonable document retention period (whether established by Agencies, or a furnisher's own policies and procedures) are to be resolved. HSBC supports the Agencies' proposed § _.43 (d)(4) requirement that a consumer who directly disputes furnished information must provide sufficient documentation which substantiates the dispute. Presumably, the Agencies are not intending to establish a direct dispute process whereby vague or ambiguous disputes may be raised without any substantiation of alleged errors. Furthermore, HSBC supports the wording of __.43(e)(1)(ii), which would allow a furnisher to treat as frivolous any direct dispute which lacks substantiating documentation reasonably requested by the furnisher.

At the same time, however, HSBC believes that the Agencies could be clearer on the interplay between "reasonable document retention" described in policies and procedures guidance and any detrimental effect of disposing records even after a reasonable amount of time. While underlying documentation remains in the possession of a furnisher for a reasonable duration, less substantiation may be required of a consumer to investigate a claim of inaccurate reporting. However, if a furnisher has retained documentation for the duration either established by federal law or in accordance with a furnisher's reasonably established retention period, a furnisher should not reasonably be required to document the basis for furnished information when it receives unsubstantiated disputes challenging accuracy.

Presumably, a furnisher would be within its rights to insist upon full substantiating documentation from the consumer to investigate an unreasonably delayed dispute, and furnished data would not be presumed inaccurate merely because a reasonable documentation retention period has passed. We suspect credit repair organizations will pay particular attention to these types of presumptions, and they might then advise consumers to delay direct disputes until after customary or mandated documentation retention periods lapse.

D. The Agencies Should Maintain Flexible, Consistent Procedures for Reporting and Interpreting data

Appendix E, Section IV., contains a listing of specific components of policies and procedures. For example, Section IV. B. would require that all furnishers should use "standard data reporting" and procedures for compiling and furnishing data. Like many other creditors, HSBC generally reports on its consumer credit products in the standard Metro 2 format in timely, secure electronic transmissions. Providing data via the approved Metro 2 standardized layout is a good approach to follow as this is accepted and preferred by the major CRAs. This ensures that creditors furnish appropriate data (including customer identification data) to the CRAs and that the CRAs will have the ability to read and post the data. However, not all fields on the Metro 2 form are mandatory. For example, codes relating to whether a person owns or rents a residence are not required. The proposal seems to imply that the form would need to be filled out completely, even though financial institutions currently do not report in fields that are not mandatory or relevant. If these codes or fields were required, financial institutions may have to manually research these fields and even then, it is not certain that financial institutions would be able to acquire all the necessary information. This would be incredibly burdensome on furnishers.

We also note that not all CRAs collect and report the same information. Some specialty CRAs, such as those providing reports relating deposit accounts, do not report in Metro II format and report more limited data. For example, ChexSystems only collects and reports data regarding negative performance on deposit accounts (e.g. overdrafts). The proposed rule governs the accuracy and integrity of information actually furnished to a CRA. The Agencies should make it clear that the proposed rule does not impose a new requirement to furnish data to CRAs that is not currently required.

E. Provisions Regarding Regular Review of Data Provided to CRAs are Insufficient

Appendix E, Sections IV.D. and M., require furnishers to conduct periodic reviews of information provided to CRAs, including periodic evaluations of its own practices as well as "consumer reporting agencies practices of which furnisher is aware." In fact, in order for furnishers to be responsible for the accuracy and integrity of data as it appears on a credit report, furnishers would need to be able to monitor how CRAs interpret and post the data. However, there is currently very limited ability to conduct auditing and monitoring of CRA procedures. Furnishers try to conduct spot checks with the CRAs on how data appears in the consumer file. HSBC does not currently have a formal process to verify random samples or to conduct regular reviews of data provided to CRAs. Many furnishers, including HSBC, obtain metric reports from the CRAs. These reports contain information on, for example, how many records were sent, the distribution of narrative codes, and compliance condition codes. However, the reports do not contain information such as how the data translated onto the report, whether the CRA used the name and address provided (and why or why not), or the reasons the CRA might edit the data provided and translate it into their own proprietary language. Without having audit capabilities at the CRAs, furnishers are unable to confirm that the data submitted is reflected accurately in the credit report.

The Agencies should provide guidance on the frequency necessary to meet regulatory expectations of what is "regular." It would also be helpful if the Agencies provided examples of the type of activity that would constitute "appropriate and effective oversight of relevant service providers" whose activities may affect the accuracy and integrity of furnished data. Finally, HSBC recommends that the Agencies require or urge the CRAs to permit furnishers to audit the data they submit as it appears on the credit report.

5. <u>The Agencies Must Clarify the Direct Dispute Regulations.</u>

HSBC supports the notion that consumers ought to, and indeed must, be provided the right to dispute incorrect or inaccurate information reported to or by the CRAs. Like most creditors, HSBC wants to receive credit reports from CRAs that are true and correct. Consumers, acting as their own advocates, can police and monitor their credit files to ensure correct and accurate information is being reported. If information in a credit file is inaccurate, consumers must have the right to dispute that information.

Recognizing the streamlined approach of dispute handling under the current requirements of the FCRA, the industry has developed a very efficient and effective method of receiving, investigating and responding to consumer disputes received by CRAs.[4] Having this efficient method of responding to disputes allows furnishers to reduce costs associated with extending credit and providing services to consumers. Additionally, having an already existing and effective method of responding to disputes encourages furnishers to continue to utilize the consumer reporting system and to rely upon the information being reported as up-to-date and accurate.

The proposed rule defines "direct dispute" to mean "a dispute submitted directly to a furnisher by a consumer concerning the accuracy of any information contained in a consumer report relating to the consumer."[5] HSBC is concerned that the "direct dispute" definition may broadly include all information provided to the CRA and not simply the information provided to the agency by a specific furnisher. It would be practically difficult for furnishers to address disputes regarding information on a credit report provided by other or unknown sources.

Furnishers should only be required to investigate direct consumer disputes pertaining to information provided to the CRAs by the furnisher. Obviously, furnishers only have control over the specific information they are providing to the CRAs. Any direct dispute submitted by a consumer to a furnisher must pertain only to the information being provided by the furnisher and not the compilation and reporting of that information by the CRA. To the extent a consumer dispute relates to an error by a CRA in compiling and reporting information, furnishers have no ability to resolve that dispute.

In addition, furnishers should not be required to investigate direct disputes that do not relate to the accuracy of information provided by the furnisher. Consumers are increasingly attempting to handle disputes that they have with retail merchants by disputing with furnishers the information provided to the CRAs that relates to the merchant transaction. Be it buyer's remorse, claimed misrepresentation, malfunction of the goods, or some other issue concerning the merchant transaction, consumers are submitting disputes concerning the information being provided by a furnisher to a CRA irrespective of whether or not the information being furnished is accurate. The FCRA and FACT Act do not include within their scope disputes between the consumer and merchant concerning the purchase transaction. Unfair and deceptive trade practices laws, warranty laws, state consumer protection laws, and other similar laws already exist to offer rights and protections to consumers in this regard. Furnishers that are providing accurate and correct information to CRAs should not be required to investigate a consumer dispute that does not pertain to the accuracy of the information provided.

HSBC recommends that the Agencies clarify the definition to provide that a direct dispute may only relate to information furnished from that specific furnisher to a consumer reporting agency.

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[4] The most common method of receiving disputes from CRAs is by way of an electronic transmission known as E-OSCAR. E-OSCAR facilitates communication between furnishers and CRAs concerning consumer disputes. Information concerning the dispute is well organized through E-OSCAR, which allows an effective means of investigating and responding to disputes in a timely manner.

[5] Section 41(e) of the Proposed rule.

Conclusion.

HSBC appreciates the opportunity to comment on the proposed rule. HSBC supports the efforts of the Agencies to develop guidelines pertaining to the accuracy and integrity of information provided to the CRAs. The guidelines should propose that furnishers establish reasonable policies and procedures commensurate with the size and scope of their activities as well as their technological capabilities, to control for the accuracy and integrity of the information they furnish.

If there are any questions concerning this letter, or the Agencies require additional information, do not hesitate to contact Jeff Wood at 847-564-6490 or Patricia Grace at 716-841-5733.

Very truly yours,

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